



Paper No. 4

EDWARDS L. PENCOSKE
THORP REED & ARMSTRONG, LLP
ONE OXFORD CENTRE
301 GRANT STREET, 14TH FLOOR
PITTSBURGH, PA 15219-1425

COPY MAILED

NOV 15 2001

OFFICE OF PETITIONS

In re Application of
Keeth et al.
Application No. 09/885,217
Filed: 22 August, 2001
Attorney Docket No. DB000575-012

:
:
:
:
:

DECISION DISMISSING
PETITION.

This is a decision on the petition, filed on 22 August, 2001, to accord the above-identified application a filing date of 20 June, 2001, with a complete specification, including at least one claim, as a part of the original disclosure.

The petition is dismissed.

On 20 June, 2001, a bundle of papers was deposited in the USPTO, and was assigned Application No. 09/885,217. The papers consisted of, *inter alia*, 232 pages of specification, including Claims 1-80, a signed declaration, and a preliminary amendment, which, *inter alia*, canceled Claims 1-222, 238-246, and 251-465. Accordingly, on 6 August, 2001, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that the application had not been accorded a filing date because the specification did not include at least one claim and that Page 29 appeared to have been omitted from the specification.

In response, on 22 August, 2001, the present petition was filed. Petitioners assert that the application as filed contained 19 claims. Petitioners state that the present application is a division of Application No. 09/620,626 which is a division of Application No. 08/916,692. Application No. 08/916,692 as filed contained Claims 1-80. Application No. 09/620,626 was filed with a preliminary amendment adding Claims 81-465. Petitioners point to a statement on the transmittal letter for Application No. 09/885,217 which incorporates by references the entire disclosure

of the prior application No. 09/620,626, as evidence that the preliminary amendment adding Claims 81-465 was incorporated into the present application, and that the application as filed with the preliminary amendment canceling Claims 1-222, 238-246, and 251-465 included 19 claims.

Petitioners' assertion is not well taken. The declaration filed in the present application is the declaration filed in Application No. 08/916,692 which was filed prior to the filing of Application No. 09/620,626 and the amendment thereto adding Claims 81-465. The declaration does not execute a subsequently-filed amendment. What was incorporated, therefore, is only the specification, claims, and drawings from Application No. 08/916,692. Therefore, the Notice correctly stated that the specification did not include at least one claim. The application is accorded a filing date of 22 August, 2001, the date that the preliminary amendment filed in Application No. 09/620,626 adding Claims 81-465, was filed in the present application.

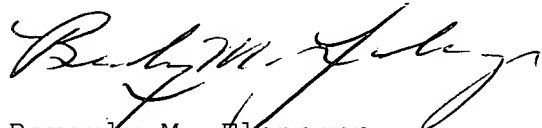
In view of the above, petitioners' assertion that Page 29 of the specification (description and claims) was filed on 20 June, 2001, is moot. The application, including Page 29, will be accorded a filing date of 22 August, 2001.

It is noted that since prior Application No. 09/620,626 had not issued as of 22 August, 2001, copendency exists between it and the present application.

As the present petition was not necessitated by Office error, the petition fee will not be refunded.

The application is being returned to the Office of Initial Patent Examination for reprocessing with a filing date of 22 August, 2001, and an indication on the bib-data sheet that 19 claims were present on filing.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at (703)308-6918.



Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy